

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 25, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:08od-115  
06od-201

OAHU

Withdrawal from General Lease No. S-5851, Windward Retreat Center, Lessee;  
Sale of Remnants to Bruce Di Meo Trust, Andrea C. Anixt Trust, and Kaaawa  
Beach Owners Association, Kaaawa, Koolaulua, Oahu, Tax Map Key: (1) 5-1-  
014:047 portion.

APPLICANTS:

1. Bruce Di Meo, Trustee of Bruce Di Meo Trust, whose mailing address is 1643 Silva Street, Honolulu, Hawaii 96819-3944 (for Sections C and E).
2. Andrea C. Anixt, Trustee of Andrea C. Anixt Trust, whose mailing address is P.O. Box 646, Kaaawa, Hawaii 96730 (for Section C).
3. Kaaawa Beach Owners Association, whose mailing address is P.O. Box 186, Kaaawa, Hawaii 96730 (for Sections B and D).

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kaaawa, Koolauloa, Oahu identified by Tax Map Key: (1) 5-1-014:047 portion on the attached map labeled Exhibit A.

AREA:

To be determined and verified by Department of Accounting and General Services (DAGS), Survey Division.

ZONING:

State Land Use District: Urban  
City & County of Honolulu LUO: R-5

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by General Lease No. 5851 issued to Windward Retreat Center for retreat center for religious, social (community), and charitable eleemosynary purposes.

CONSIDERATION (for Sections B, D, and E):

One-time lump sum payment of fair market value to be determined by independent appraiser, subject to review and approval by the Chairperson.

UPSET PRICE (for Section C):

One-time lump sum payment of fair market value to be determined by an independent appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowners and will become privately owned land at that point.

DCCA VERIFICATION:Kaaawa Beach Owners Association

Place of business registration confirmed: YES x NO   

Registered business name confirmed: YES x NO   

Good standing confirmed: YES x NO   

Bruce Di Meo Trust and Andrea C. Anixt Trust

Not applicable. The Applicants as landowners are not required to register with DCCA.

APPLICANT REQUIREMENTS: Applicants shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 2) Pay for an appraisal to determine the one-time payment of fair market value for the remnant; and
- 3) Consolidate the subject remnant with the Applicant's abutting property through the County subdivision process.

REMARKS:

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics."

The requested area (Area) was used for military purpose during the war and was returned to the State in 1953. Currently, the entire parcel 47 is encumbered under General Lease No. (GL) 5851 to Windward Retreat Center for retreat center for religious, social (community), and charitable eleemosynary purposes. As shown on Exhibit A, the Area is a portion of the abandoned path connecting the main area of parcel 47 and the lookout area in the top of the mountain. The Area is only five (5) feet in width, which does not provide any development potential for GL 5851. Therefore, staff recommends the Board determine the Area as remnant under 171-52, HRS.

During the disposition of the GL 5851, there were some discussions regarding the future disposition of the Area. Eventually, Condition 37, titled "Withdrawal", was included in GL 5851, which allows the State to withdraw from the premises, or any portion, for the sale of road remnant.

Prior to the issuance of GL 5851, the Department received requests from the abutting owners to purchase different portions of the Area. The requests involve multiple owners and processes (subdivision and appraisal) and none of the requests was consummated. Recently, staff received similar requests from other owners.

Staff decided to explore possible interests from other abutting owners who have never submitted any request to the Department. To illustrate the respective portions of the Area, staff has marked Sections A to F on Exhibit A and the respective owners are tabulated below.

| TMK         | Owner(s)                                   | Remnant |
|-------------|--|---------|
| 5-1-014:030 | Fulvio Fonda & Patrick & Deirdre Sylvestre | A       |
| 5-1-014:031 | Arthur & Chigusa Butcher                   | A       |
| 5-1-014:044 | Kaaawa Beach Owners Association            | B       |
| 5-1-014:014 | Andrea C Anixt Trust                       | C       |
| 5-1-014:015 | Bruce Di Meo Trust                         | C       |
| 5-1-014:045 | Kaaawa Beach Owners Association            | D       |
| 5-1-014:008 | Bruce Di Meo Trust                         | E       |
| 5-1-014:009 | Bruce Di Meo Trust                         | E       |
| 5-1-007:001 | Kualoa Ranch, Inc.                         | F       |

The above named owners were asked to indicate their interests in purchasing the respective portion(s) from the State by checking the appropriate space in a letter addressed to them. After the deadline, staff received the following positive responses.

| TMK         | Owner(s)                        | Remnant |
|-------------|---------------------------------|---------|
| 5-1-014:044 | Kaaawa Beach Owners Association | B       |
| 5-1-014:014 | Andrea C Anixt Trust            | C       |
| 5-1-014:015 | Bruce Di Meo Trust              | C       |
| 5-1-014:045 | Kaaawa Beach Owners Association | D       |
| 5-1-014:009 | Bruce Di Meo Trust              | E       |

In short, there are three interested owners over Sections B, D, and E and two interested owners over Section C. Staff recommends the Board consider the requests separately as detailed below.

#### Sections B, D, and E

Subject to the Board approval, disposition for Sections B, D, and E will be followed by the normal processes, i.e. applicants providing survey map and description, appraisal, and consolidation at the county.

#### Section C

For Section C, both Andrea C. Anixt Trust (Anixt) and Bruce Di Meo Trust (Di Meo) show their interests. By a letter dated September 3, 2009 (Exhibit B), Anixt requests to purchase the entire Section C to provide sufficient setback for her proposed second story structure. Di Meo is interested in purchasing half of Section C as indicated in his response. Further, Di Meo indicates to the staff that he will consider purchasing the entire Section C, if necessary.

According to Section 171-52, HRS, "... if there is more than one abutting owner who is interested in purchasing the remnant, it shall be sold to the one submitting a sealed bid containing the highest offer above the appraised value. If the remnant abuts more than one parcel, the board may subdivide the remnant so that a portion thereof may be sold to each abutting owner at the appraised value ...". Staff believes the latter portion of the statutes applies when there is an agreement between interested owners. In the lack of any agreement as to how subdivide the remnant, the only recourse will be disposing the subject remnant through sealed bid process. Therefore, staff recommends the Board authorize the disposition of Section C through sealed bid process. Each applicant will be asked to pay for the entire appraisal fee for determining the upset bid. However, the unsuccessful applicant will receive the refund of the appraisal fee at the conclusion of the sealed bid process.

#### Response from Windward Retreat Center (WRC)

WRC, the current lessee of the Area, was asked to indicate if they have any comments or objections to the proposal. Staff has not received any written response from WRC. In the past, WRC indicated they prefer the entire remnant be withdrawn from their lease (GL 5851) and sold to the abutting owners. There is no legal provision requiring any abutting owners to purchase the remnant from the State. Also, the configuration of the lease premises under GL 5851 has not been changed, i.e. the remnant has been part of the lease premises.

Condition 37 stipulates that the rent for GL 5851 shall be reduced in proportion to the value of land withdrawn or made unusable. The Area is not significant in terms of space and utility for GL 5851. The remaining portion of the leased premises under GL 5851 will not become unusable. Therefore, staff recommends the Board authorize the current annual rent for GL 5851 (\$480) remains unchanged.

Before staff can process this request further, Sections B, C, D, and E of the Area shown on Exhibit A need to be withdrawn from GL 5851. The proposed withdrawal will not become effective before the conveyance documents of the respective sections are consummated. Staff recommends the Board authorize such withdrawal.

| Agency  | Comments  |
|---|---|
| Office of Conservation and Coastal Lands                      | If in conservation district, CDUA requires for consolidation/resubdivision.<br><i>Staff response-not applicable because sections B, C, D, and E are not in conservation land.</i>   |
| Division of Forestry and Wildlife                             | No objections   |
| State Historic Preservation Division                          | The area has a high probability of unidentified historically significant resources, traditional and/or historic, including human remains/burials. An archaeological monitoring plan written specifically be submitted for review prior to start of construction activities.<br><i>Staff response-appropriate condition will be incorporated in the conveyance document.</i> |
| Department of Planning and Permitting                         | Requires subdivision approval.<br><i>Staff response-it is a standard requirement for sale of remnant to undergo subdivision/consolidation process at the county.</i>  |
| Office of Hawaiian Affairs                                    | Requests public access and Native Hawaiian gathering rights via this path be examined.<br><i>Staff response-it is a standard condition in the conveyance document that the sale is subject to the Native Hawaiian rights.</i>   |
| Board of Water Supply   | No objections   |
| Department of Hawaiian Home Lands                             | No comments   |
| Department of Health, Commission of Water Resource Management | No response received as of the suspense date  |

RECOMMENDATION: That the Board:

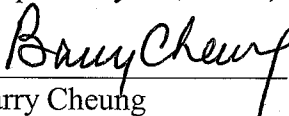
1. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant

pursuant to Chapter 171, HRS.


2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described in this submittal, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Authorize the subdivision and consolidation of the subject remnants by the respective Applicants for Sections B, D, and E and the successful bidder for Section C.
4. Authorize the withdrawal of Sections B, C, D, and E, as appropriate from General Lease No. 5851 and further subject to the following:
  - a. The standard terms and conditions of the most current withdrawal form, as may be amended from time to time;
  - b. Annual rent for GL 5851 (\$480) remains unchanged;
  - c. Review and approval by the Department of the Attorney General; and
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the Sections B, D, and E to the Applicants covering the respective area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current deed form, as may be amended from time to time;
  - b. Submit an archaeological monitoring plan for approval prior to the start of any construction activities;
  - c. Review and approval by the Department of the Attorney General; and
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
6. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of Section C to the successful bidder as mentioned above covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- a. The standard terms and conditions of the most current deed or grant (remnant) form, as may be amended from time to time;
- b. Submit an archaeological monitoring plan for approval prior to the start of any construction activities;
- c. Review and approval by the Department of the Attorney General; and
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson







The reasons TMK 5-1-014-014 abutting DLNR remnant(-047) needs to purchase all 5' of the remnant.

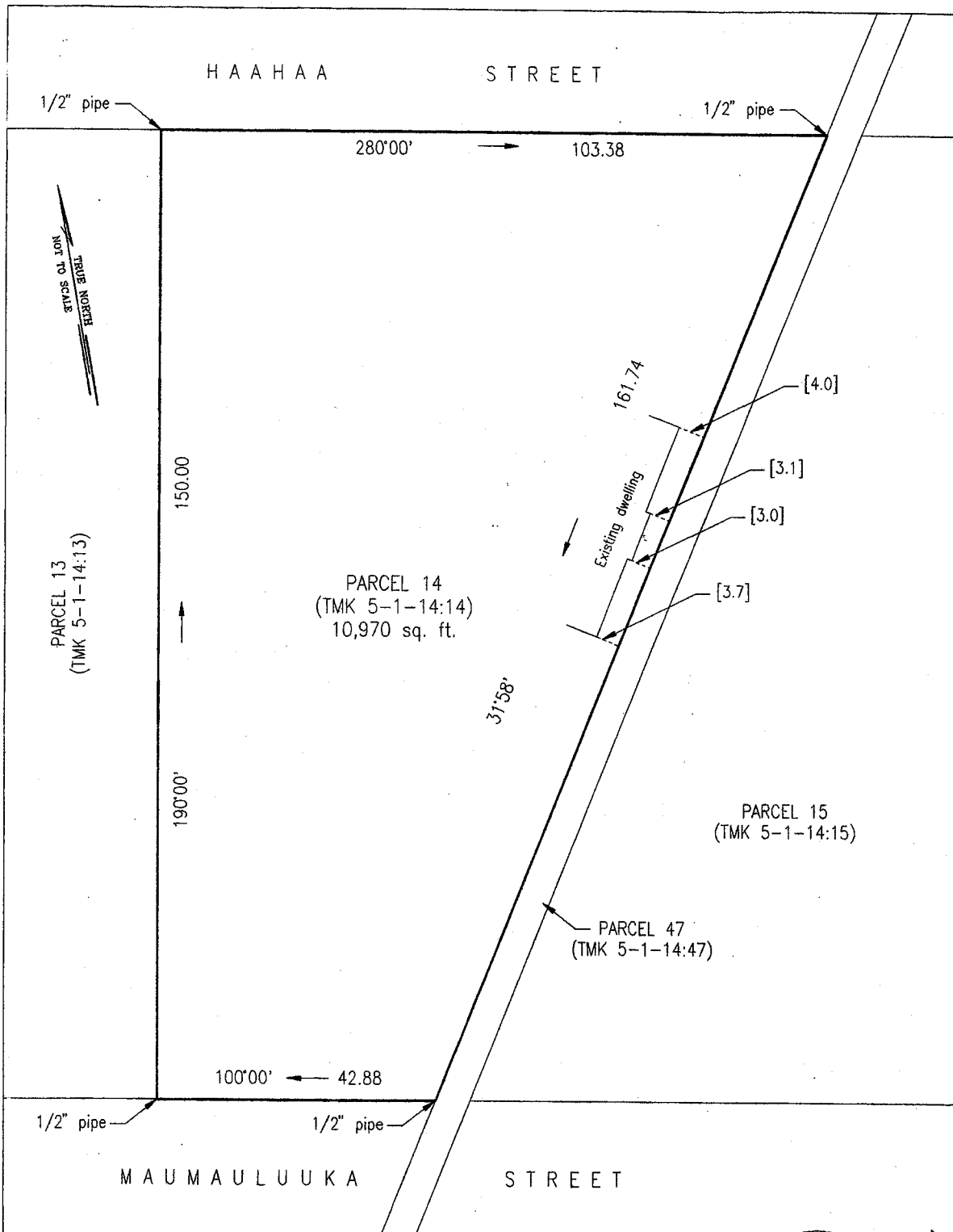
The Wesley Tengan survey shows the current setback from the property boundary to the existing dwelling is short up to 2 feet of space. That makes it insufficient by more than 2.5 feet to build a second story 17' wide over the existing dwelling which is 17' wide there, 15' tall,

TMK 5-1-014-015, the other abutting property owner, chose to build a rental unit blocking all of TMK 5-1-014-014's ocean and outer island view several years ago, and planted coconut trees, etc. in the remnant strip.

I, TMK 5-1-014-014, am over 65, disabled since 2004 and must stay home most of the time. To regain my view, to help rectify the depreciation of my property and to have my son be able to be here and help me more now I will need to build the story above the existing dwelling most of all. That would require setback for up to 23' in dwelling height to accomplish - or 9' setback per code now in effect.

Andrea Arrieta 9/3/09

**EXHIBIT "B"**



LOCATION MAP  
PARCEL 14

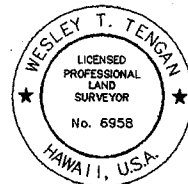
Kaawa, Koolauloa, Oahu, Hawaii

Date: August 28, 2009

Tax Map Key: 5-1-14:14

Owner: Anixt

SINCE 1970's



THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION

*Wesley T. Tengan*  
Signature

Notes:

1. Only improvements shown were located
2. [4.0] denotes distance to property line